

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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| <u>CONSERVATION LAW FOUNDATION, INC.</u> | : | |
| Plaintiff, | : | Civil Action No.: |
| | : | |
| v. | : | <u>PROPOSED</u> |
| | : | <u>CONSENT DECREE</u> |
| <u>ROCKRIMMON AUTO PARTS &</u> | : | |
| <u>RECYCLING, INC.</u> | : | |
| Defendant. | : | |
| | : | |

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action against Defendant Rockrimmon Auto Parts & Recycling, Inc. (hereinafter "Rockrimmon"), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, Rockrimmon is a domestic corporation organized in the Commonwealth of Massachusetts, with its principal office at 551 Center Street, Chicopee, MA 01013;

WHEREAS, Rockrimmon owns and operates an automobile salvage yard facility located at 551 Center St, Chicopee, MA 01013 (the "Facility");

WHEREAS, CLF has alleged, in its complaint (the "Complaint") and in a letter dated September 3, 2013 (the "Notice Letter"), sent to Rockrimmon and others, that Rockrimmon has violated and continues to violate Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a);

WHEREAS, the Facility discharges stormwater that ultimately reach the Connecticut River;

WHEREAS, the United States Environmental Protection Agency ("EPA") on September 27, 2013 issued a memorandum advising of the "pending lack of a Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ('MSGP')", and that "the current MSGP under the National Pollutant Discharge Elimination System ("NPDES") program will expire on September 29, 2013";

WHEREAS, Rockrimmon had not finalized a Draft Notice of Intent filed with EPA prior to such deadline;

WHEREAS, Rockrimmon has developed a Stormwater Pollution Prevention Plan ("SWPPP") for the Facility, dated September 9, 2013;

WHEREAS, Rockrimmon has implemented certain Best Management Practices ("BMPs") at the

Facility; and

WHEREAS, CLF and Rockrimmon (collectively, "the Parties" or individually "Party") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Rockrimmon of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Rockrimmon facility, located at 551 Center St, Chicopee, MA 01013, which is located within this judicial district.

II. COMPLIANCE PROGRAM

3. Rockrimmon will operate the Facility in compliance with the SWPPP (or any subsequently amended version(s) of the SWPPP) and the most recently issued Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"). The MSGP, as it may be updated or reissued from time to time, is incorporated into this Consent Decree by reference.

4. Rockrimmon will design, install, and implement control measures that include, at minimum, the following categories of site-specific best management practices ("BMPs"):

- a. Good housekeeping practices,
- b. Minimize exposure of potential pollutant sources to precipitation,
- c. Erosion and sediment control, and
- d. Management of runoff.

5. Rockrimmon will design, install, and implement control measures that reduce and/or eliminate pollutant discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable (BAT) and practicable (BPT) in light of best industry practice including, but not limited to:

- a. The site-specific BMPs listed in Part 8.M.2 of the 2008 MSGP, and
- b. The "BMPs for Potential Pollutant Sources at Automobile Salvage Yards" listed in Table 2 of the EPA *Industrial Fact Sheet Series for Activities Covered by EPA's MSGP (Sector M: Automobile Salvage Yards)*, available at: http://www.epa.gov/npdes/pubs/sector_m_autosalvage.pdf

6. The Parties hereby agree that RELCO Engineering, 293 Jarvis Avenue, Holyoke, MA 01040 ("RELCO") is a qualified stormwater professional.

7. Rockrimmon has contracted with RELCO to assist with the implementation of the SWPPP at the Facility. All fees and expenses of RELCO shall be the sole responsibility of Rockrimmon.

8. RELCO has trained Rockrimmon's employees on employee obligations contained in the SWPPP, including without limitation spill prevention and response and the management of potential pollutant sources and materials.

9. Rockrimmon will operate in accordance with the 2008 MSGP and will within thirty (30) days of the date that EPA issues a new general permit, submit a complete and accurate Notice of Intent ("NOI") to the EPA, and send a copy of the NOI to CLF within fourteen (14) days thereof.

10. If appropriate and feasible, including without limitation financial and site geologic considerations, Rockrimmon will design, install, and implement control measures that employ a low-impact development (LID) approach. LID is a natural-resource-based alternative approach to site design that incorporates a variety of structural and non-structural techniques, such as vegetated areas that collect, treat and infiltrate stormwater and shallow drainage channels that slow runoff and filter it.

III. MONITORING PROGRAM

11. Rockrimmon shall continue to perform and document benchmark monitoring in accordance with the 2008 MSGP.

12. Rockrimmon has commenced and will continue to continue monitor four (4) times per year at all outfalls discharging industrial stormwater from the Facility for pollutants identified in the 2008 MSGP for Sector M (i.e., Total Suspended Solids, Aluminum, Iron, and Lead). The quarterly monitoring must be performed pursuant to the requirements of Part 6 and Appendix B of the MSGP. Rockrimmon will send a copy of each inspection and/or sampling result to CLF no later than fourteen (14) days after submitting it to EPA.

13. Rockrimmon will also comply with all other inspection and monitoring requirements of the 2008 MSGP including, but not limited to, those of Part 4. Rockrimmon will send a copy of each inspection and/or sampling result to CLF no later than fourteen (14) business days after submitting it to EPA.

14. During the life of the Decree, CLF, through representatives, may conduct up to two (2) yearly site inspections at the Facility. The site inspections shall occur during normal

business hours and upon forty-eight (48) hours prior written notice. During the site inspections, CLF representatives may collect water and soil samples and take photos at the Facility. Any such samples shall be split samples with one of the split samples remaining in the possession of Rockrimmon.

15. Rockrimmon shall implement control measures as necessary to meet the benchmark levels for Total Suspended Solids, Aluminum, Iron, and Lead, to the extent that such measures are technologically feasible and economically practicable in light of best industry practices.

16. During the life of the Decree, Rockrimmon shall copy CLF on all documents related to water quality or environmental compliance regarding the Facility submitted to any government agency including, but not limited to, the EPA, the Massachusetts Department of Environmental Protection (DEP), and the City of Chicopee. Such documents shall be provided to CLF no later than fourteen (14) business days after submitting them to the agencies and/or municipalities.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

17. Within one year of the entry by the Court of this Decree, Rockrimmon shall make a Supplemental Environmental Project ("SEP") payment of fifteen thousand dollars (\$15,000.00) to Nuestras Raices, 329 Main Street, Holyoke, MA 01040 (Attn: Hilda Roqué, Executive Director) for environmental restoration of or other environmental benefit to the Connecticut River watershed. Rockrimmon shall notify CLF in writing when a payment is made and provide copies of the checks. The SEP payments shall be made according to the following schedule:

- a. \$2,500.00 to be paid within seven (7) months of the Effective Date;
- b. \$2,500.00 to be paid within eight (8) months of the Effective Date;
- c. \$2,500.00 to be paid within nine (9) months of the Effective Date;
- d. \$2,500.00 to be paid within ten (10) months of the Effective Date;
- e. \$2,500.00 to be paid within eleven (11) months of the Effective Date; and
- f. \$2,500.00 to be paid within twelve (12) months of the Effective Date.

18. For each missed deadline included in this Decree, including but limited to failures to timely conduct quarterly benchmark monitoring and inspections pursuant to Parts 4 and 6 of the 2008 MSGP, Rockrimmon will make an additional SEP payment to Nuestras Raices, in the amount of one hundred fifty dollars (\$150.00) for environmental restoration of or other benefit to the Connecticut River watershed. Payment of each such additional amount shall be due fourteen (14) days following each missed deadline. Rockrimmon shall notify CLF in writing concurrently each time a payment is made and provide proof of such payment.

19. None of the SEP payments shall be dispersed to CLF.

V. LIQUIDATED ATTORNEY FEES AND COSTS

20. On or before July 15, 2014, Rockrimmon shall pay to CLF a sum of twelve thousand dollars (\$12,000.00) as full and complete satisfaction of CLF's claim for attorneys' fees and

costs incurred to date in this matter. The payment shall be made payable to Conservation Law Foundation at the Notice address.

21. To help defray CLF's reasonable anticipated costs incurred in conducting site inspections and other compliance monitoring, Rockrimmon agrees to pay CLF an additional sum of three thousand dollars (\$3,000.00) within ten (10) days of the entry by the Court of this Decree.

22. In the event that any payment owed by Rockrimmon under the Decree is not made on or before the due date, Rockrimmon shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Rockrimmon will pay to CLF liquidated attorney fees of one hundred fifty dollars (\$150.00) for every day that the payment is late.

VI. EFFECT OF DECREE

23. CLF covenants not to sue and releases Rockrimmon Auto Parts & Recycling, Inc., (and its parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief from the beginning of time to the Effective Date (i) relating to or resulting from noncompliance with the MSGP at the Facility occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint.

24. Rockrimmon Auto Parts & Recycling, Inc., releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action from the beginning of time to the Effective Date.

25. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Rockrimmon shall constitute or be construed as an admission or acknowledgment by Rockrimmon of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Rockrimmon retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Rockrimmon of any liability, or an admission of violation of any law, by Rockrimmon or by its officers, directors, employees, agents, successors, or assigns.

26. CLF does not, by consent to the Decree, warrant or aver in any manner that Rockrimmon's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Rockrimmon to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

VII. REVIEW AND TERM OF DECREE

27. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

28. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court (the "Effective Date") and shall terminate three (3) years from when it is entered by the Court. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

29. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

30. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

IX. MISCELLANEOUS PROVISIONS

31. This Decree shall remain in effect if Rockrimmon relocates the Facility to a different location.

32. Sections I, IV, V, VI, VII, and VIII of this Decree shall remain in effect if Rockrimmon ceases to be the operator of the Facility.

33. All payments pursuant to this Decree shall be made in form of a certified bank check.

34. Authorization. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

35. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

36. Notices. Any notice, demand, copies of documents and other communications

required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for CLF shall be sent to:

Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
zgriefen@clf.org
Attorney for CLF

Notice for Rockrimmon shall be sent to:

Mr. Francis T. Merrill
Rockrimmon Auto Parts
551 Center Street
Chicopee, MA 01013-1563

with a copy to:

Shephard S. Johnson, Jr., Esquire
Shephard S. Johnson, Jr. & Associates, P.C.
628 Pleasant Street, Suite 428
New Bedford, MA 02740
ssj@shepjlw.com
Attorney for Rockrimmon

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth on this paragraph.

38. Successors and Assigns. This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

39. Interpretation. The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

40. Headings. The section and paragraph headings contained in this Decree are for

reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

41. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other means, shall be effective. This Agreement may be signed in counterparts.

42. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

CONSERVATION LAW FOUNDATION

By: 

Date: 2/24/14

Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

ROCKRIMMON AUTO PARTS & RECYCLING, INC.

By: _____

Date: _____

Francis T. Merrill, President

ENTERED and DATED this ____ day of _____, 2014

Honorable _____
United States District Judge

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CONSERVATION LAW FOUNDATION

By: _____ Date: _____

Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

ROCKRIMMON AUTO PARTS & RECYCLING, INC.

By: Francis T. Merrill C.E.O. Date: 02-25-2014
Francis T. Merrill, President

ENTERED and DATED this ____ day of _____, 2014

Honorable _____
United States District Judge